

BEFORE THE HONORABLE ANTHONY J. BATTAGLIA, JUDGE PRESIDING

----- ) SAN DIEGO, CALIFORNIA  
 ) MAY 28, 2014  
 ) 2:23 P.M.

THIS DOCUMENT RELATES TO ALL CASES

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
CASE MANAGEMENT CONFERENCE

MAY 28, 2014

## 1 SPEAKING APPEARANCES:

2 FOR PLAINTIFFS: HUNTER J. SHKOLNIK, ESQ.  
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6 RYAN L. THOMPSON, ESQ.  
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**SAN DIEGO, CALIFORNIA; WEDNESDAY, MAY 28, 2014; 2:23 P.M.**

**DEPUTY CLERK:** CALLING MATTER FIVE ON THE CALENDAR,  
CASE NUMBER 13MD2452, IN RE INCRETIN PRODUCTS LIABILITY  
LITIGATION, ON FOR CASE MANAGEMENT CONFERENCE.

**THE COURT:** ALL RIGHT. WE ARE ON THE RECORD IN THIS  
CASE. THIS IS JUDGE BATTAGLIA. AND WE HAVE FOLKS IN THE  
COURTROOM AND FOLKS ON THE PHONE FOR THE OPEN SESSION OF THE  
CASE MANAGEMENT CONFERENCE SET FOR TODAY.

I DID MEET WITH THE PLAINTIFFS' STEERING COMMITTEE  
AND THE DEFENSE REPRESENTATIVES IN CHAMBERS, WHERE WE DISCUSSED  
THE AGENDA AND CERTAIN ASPECTS OF STATUS. WE CAME TO SOME  
UNDERSTANDINGS, AND SET SOME OTHER DATES AND PROCEDURES, WHICH  
I'LL REVIEW.

ON THE PHONE -- I WILL JUST GO OFF THE LIST AND JUST  
VERIFY THAT FOLKS ARE HERE. LET'S SEE. I HAVE RAY WILLIAMS.  
ARE YOU THERE?

**MR. WILLIAMS:** YES, YOUR HONOR.

**THE COURT:** ANDREW WILLIAMS? PRESENT? HEARING NONE.  
OKAY. RAMON LOPEZ?

**MR. LOPEZ:** I'M HERE, YOUR HONOR.

**THE COURT:** MARC BERN?

**MR. SHKOLNIK:** HE IS NOT ON, YOUR HONOR.

**THE COURT:** OKAY. STEPHANIE POLI?

**MS. POLI:** GOOD AFTERNOON, YOUR HONOR. I AM ACTUALLY  
APPEARING HERE, PRESENT.

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1           **THE COURT:**   PRESENT.   OKAY.

2           LAWRENCE JONES?

3           TIMOTHY CLARK?

4           **MR. CLARK:**    HERE.

5           **THE COURT:**   YOU'RE PRESENT.

6           ANDY JOHNSON?

7           **MR. JOHNSON:**   PRESENT.

8           **THE COURT:**   KENNETH BRENNAN?

9           **MR. BRENNAN:**   PRESENT.

10          **THE COURT:**   CHAFICA SINGHA?

11          **MS. SINGHA:**    HERE.

12          **THE COURT:**   ANDREW HARRIS?

13          **MR. HARRIS:**    HERE, YOUR HONOR.

14          **THE COURT:**   ANDRE SHERMAN?

15          **MR. SHERMAN:**   GOOD AFTERNOON, YOUR HONOR.

16          **THE COURT:**   GOOD AFTERNOON.

17          NEAL ELLIOTT?

18          **MR. ELLIOTT:**   HERE, YOUR HONOR.

19          **THE COURT:**   NEAL MOSKOW?

20          **MR. MOSKOW:**    HERE, YOUR HONOR.

21          **THE COURT:**   MAX KENNERLY?

22          **MR. KENNERLY:**   HERE, YOUR HONOR.

23          **THE COURT:**   AND JOHN RESTAINO?

24                 HE PROBABLY WENT TO COCKTAILS.   IT'S PROBABLY HIS  
25   TIME ZONE, RIGHT?

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1 NEIL OVERHOLTZ?

2 MS. LIU: I'M HERE ON BEHALF OF NEIL OVERHOLTZ, YOUR  
3 HONOR. MY NAME IS MARY LIU.

4 THE COURT: GIVE ME THAT AGAIN?

5 MS. LIU: MARY LIU.

6 THE COURT: MARY LIU.

7 DAVID DEARING?

8 MR. DEARING: PRESENT, YOUR HONOR.

9 THE COURT: TOM HAKLAR?

10 MR. HAKLAR: HERE, YOUR HONOR.

11 THE COURT: TRIPP SEGARS?

12 MR. SEGARS: YES, YOUR HONOR.

13 THE COURT: DAVID DEARING?

14 MR. DEARING: PRESENT.

15 THE COURT: COREY MOWREY?

16 WE HAVE MS. LIU, WHICH I ALSO HAVE LISTED SEPARATELY.

17 NATHAN BESS?

18 MS. LIU: I'M ALSO REPRESENTING NATHAN, YOUR HONOR.

19 MARY LIU.

20 THE COURT: TIM BROWN?

21 MR. BROWN: HERE, YOUR HONOR.

22 THE COURT: NATE JONES?

23 MR. JONES: HERE.

24 THE COURT: DAVID MCMASTER?

25 MR. MCMASTER: HERE, YOUR HONOR.

1           **THE COURT:**   DAE YEOL LEE?

2           **MR. LEE:**    HERE, YOUR HONOR.

3           **THE COURT:**   JASON COGGINS?

4           **MR. COGGINS:**   HERE, YOUR HONOR.

5           **THE COURT:**   DAVID SETHI?   NO.

6                   SHAYNA SACKS?

7                   SCOTT EDSON?

8           **MR. EDSON:**   HERE, YOUR HONOR.

9           **THE COURT:**   NINA GUSSACK?

10          **MS. GUSSACK:**   YES, YOUR HONOR.

11          **THE COURT:**   ANYBODY I MISSED ON THE PHONE?

12          **MR. ALTMAN:**   YES, YOUR HONOR.

13          **THE COURT:**   GO AHEAD.

14          **MR. ALTMAN:**   YOUR HONOR, THIS IS KEITH ALTMAN ON  
15 BEHALF OF PLAINTIFFS.

16          **THE COURT:**   SAY THE LAST NAME AGAIN?

17          **MR. ALTMAN:**   ALTMAN, A-L-T-M-A-N.

18          **THE COURT:**   GOT IT.   THANKS.   JUST A LITTLE FOGGY ON  
19 THE SPEAKER HERE.

20                   WHO ELSE?

21          **MS. SMITH:**   YOUR HONOR, THIS IS LAURA SMITH FOR THE  
22 PLAINTIFFS.

23          **THE COURT:**   ALL RIGHT.   AND ANYBODY ELSE?

24                   AND THEN WHY DON'T WE HAVE THE DEFENSE GROUP GO  
25 AROUND THE TABLE AND MAKE THEIR APPEARANCES, STARTING WITH

1 MR. MARVIN.

2 MR. MARVIN: DOUGLAS MARVIN FOR MERCK, YOUR HONOR.

3 MR. GOETZ: RICHARD GOETZ FOR AMYLIN, YOUR HONOR.

4 MR. KING: KENNETH KING FOR LILLY.

5 MR. BROWN: LOREN BROWN FOR NOVO NORDISK, YOUR HONOR.

6 MS. KEVINE: HEIDI LEVINE FOR NOVO NORDISK.

7 MR. YOUNG: CHRIS YOUNG, YOUR HONOR, FOR NOVO  
8 NORDISK.

9 THE COURT: MR. SWINTON.

10 MR. SWINTON: STEVE SWINTON FOR LILLY, YOUR HONOR.

11 MS. REYES: ANA REYES FOR MERCK.

12 THE COURT: AND LET'S GO ON TO THE PLAINTIFFS' GROUP  
13 HERE.

14 MR. SHKOLNIK: GOOD AFTERNOON, YOUR HONOR. HUNTER  
15 SHKOLNIK ON BEHALF OF PLAINTIFFS.

16 MR. THOMPSON: RYAN THOMPSON ON BEHALF OF PLAINTIFFS,  
17 YOUR HONOR.

18 MR. HOERMAN: TOR HOERMAN ON BEHALF OF PLAINTIFFS.

19 MR. JOHNSON: YOUR HONOR, MIKE JOHNSON ON BEHALF OF  
20 PLAINTIFFS.

21 MR. DRAKULICH: GOOD AFTERNOON, YOUR HONOR. NICK  
22 DRAKULICH ON BEHALF OF THE PLAINTIFFS.

23 MR. PREUSS: YOUR HONOR, T.J. PREUSS ON BEHALF OF  
24 PLAINTIFFS.

25 MS. BLATT: GAYLE BLATT ON BEHALF OF PLAINTIFFS.

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1           **MR. PLATTENBERGER:** JACOB PLATTENBERGER ON BEHALF OF  
2 PLAINTIFFS.

3           **MR. PERSON:** KEN PERSON ON BEHALF OF PLAINTIFFS.

4           **MS. ZAIC:** JULIA ZAIC ON BEHALF OF PLAINTIFFS.

5           **MS. BEHAN:** WENDY BEHAN ON BEHALF OF PLAINTIFFS.

6           **THE COURT:** AND ANYONE ELSE?

7           AND MS. POLI AND MR. CLARK WE ALREADY NOTE AS  
8 PRESENT.

9           **MR. MERCERO:** JOHN MERCERO (PH) ON BEHALF OF  
10 PLAINTIFFS.

11           **THE COURT:** THANKS, MR. MERCERO. SO YOU ARE ALL  
12 ACCOUNTED FOR. WE HAVE REVIEWED THE SECOND STATUS CONFERENCE  
13 MANAGEMENT ORDER THAT ISSUED AFTER THE MARCH 4TH MEETING,  
14 TODAY, ALONG WITH THE AGENDA FILED AS DOCUMENT 463 IN THE CASE,  
15 THE JOINT SUBMISSION BY THE PARTIES.

16           SO LET ME JUST REVIEW THE DISCUSSIONS. I STARTED  
17 WITH THE QUESTION ABOUT THE OPEN ITEM OF A CUTOFF FOR DATA  
18 END-POINT, CULL POINT FOR DEFENDANT LILLY. THAT HAD BEEN LEFT  
19 TO DISCUSSION. ALL SUCH POINTS FOR THE THREE OTHER DEFENDANTS  
20 WERE SET AT FEBRUARY 28, 2014.

21           AND THE DISCUSSIONS ARE GOING TO CONTINUE. THERE  
22 ARE, APPARENTLY, TEN CUSTODIANS FOR LILLY, TEN OF WHICH ARE  
23 STATED TO HAVE DIRECT INVOLVEMENT UP TO, LET'S SAY, THE CURRENT  
24 TIME, BUT EIGHT OTHERS WHOSE INVOLVEMENT IS MORE LIMITED AND  
25 MAY NOT HAVE BEEN PAST MARCH OF 2013.

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1           AND SO COUNSEL WERE GOING TO MEET AND CONFER --  
2 COUNSEL FOR LILLY AND PLAINTIFFS -- ON THE DATE RELATIVE TO  
3 THESE OTHER EIGHT, WHETHER IT SHOULD BE FEBRUARY 2014 OR MARCH  
4 OF 2013, AND SEE IF THEY COULD COME TO SOME RESULT.

5           I HAVE ASKED COUNSEL FOR LILLY TO ASSESS THE NUMBER  
6 OF DOCUMENTS -- THROUGH THE SEARCH PROTOCOL THAT IS BEING  
7 UTILIZED -- THAT WOULD RELATE TO THESE EIGHT OTHER INDIVIDUALS,  
8 AND THEN COUNSEL CAN UTILIZE THAT INFORMATION AND TALK ABOUT  
9 THE POTENTIAL FOR SAMPLING OR SOLVING THE ISSUE OF THIS  
10 ONE-YEAR TIME SPAN IN THE CASE.

11           LILLY'S INVOLVEMENT WITH BYETTA HAS REDUCED IN THE  
12 UNITED STATES. AMYLIN HAS TAKEN ON THE MAJOR ASPECTS OF THAT.  
13 THERE IS LIMITED INTERNATIONAL WORK BY LILLY GOING ON WITH  
14 BYETTA. 14 COUNTRIES WILL BE IDENTIFIED FOR PLAINTIFFS'  
15 COUNSEL AS TO WHERE THAT WORK IS BEING DONE, AND THAT WILL BE  
16 TAKING PLACE ALONG WITH THESE DISCUSSIONS.

17           I'M GOING TO FOLLOW UP AT THE JULY 1ST STATUS  
18 CONFERENCE, WHICH WE'LL SET AT 9:00 THAT DAY FOR THE INFORMAL  
19 AND THEN 10:00 FOR THE FORMAL, SO THAT WE CAN CHECK ON HOW  
20 COUNSEL HAVE MADE OUT ON THAT ISSUE.

21           AND FROM LILLY'S STANDPOINT, MR. KING, HAVE I PRETTY  
22 WELL OUTLINED WHERE WE ARE ON THAT ISSUE?

23           **MR. KING:** YES, BUT I JUST WANT TO MAKE SURE THE  
24 RECORD IS CLEAR. IN 2011 OUR U.S. INVOLVEMENT CEASED.

25           **THE COURT:** RIGHT. CEASED COMPLETELY. THANK YOU FOR

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1 THAT CLARIFICATION.

2 AND FROM THE PLAINTIFFS' SIDE, DOES THAT PRETTY WELL  
3 SUMMARIZE WHERE WE ARE AT THE MOMENT?

4 **MR. HOERMAN:** I BELIEVE IT DOES, JUDGE. I THINK THE  
5 ONE THING THAT WASN'T MENTIONED WAS THEIR INVOLVEMENT IN TWO  
6 ONGOING CLINICAL TRIALS, EVEN UP TO TODAY'S DATE.

7 **THE COURT:** PARDON ME. THAT IS PART OF IT. AND THAT  
8 RELATES TO THE TWO CUSTODIANS WHO HAVE THE SO-CALLED DIRECT  
9 INVOLVEMENT. THEY ARE PART OF THESE, ONGOING. SO THANK YOU  
10 FOR THAT CLARIFICATION.

11 THE NEXT ISSUE WE ADDRESSED WAS PARAGRAPH TWO OF THE  
12 MARCH 4TH ORDER, THAT RELATED TO THE PRODUCTION OF ALL OF WHAT  
13 WAS COLLOQUIALLY CALLED "THE FDA FILES." AND THAT WAS TO BE BY  
14 MAY 9TH, AND WE ARE TO CHECK ON THAT TODAY.

15 THERE IS SOME INFORMATION THAT IS STILL COMING IN THE  
16 FORM OF THE CUSTODIAN FILES THAT DO HAVE A SEPARATE PRODUCTION  
17 DATE. THERE ARE SOME ISSUES RELATED TO, AS I SEE IT, PRIVILEGE  
18 LOG PROTOCOLS AND MAYBE SOME OF THE OTHER DYNAMICS THAT PUT  
19 INTO QUESTION WHETHER COMPLETE DISCLOSURE HAS BEEN MADE TO  
20 DATE.

21 DEFENSE COUNSEL ALL ASSERT THAT THEY WILL CERTIFY  
22 COMPLETION OF THE PRODUCTION -- WITH SOME FURTHER UPDATES OR  
23 SUPPLEMENTS BY MERCK, AND I THINK IT'S MERELY CERTIFICATIONS  
24 FOR THE OTHER FOLKS -- THAT WILL CERTIFY THAT INFORMATION  
25 RESPONSIVE TO THE RELEVANT DOCUMENTS AS OUTLINED BY THE COURT

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1 IN DOCUMENT 377, CONCERNING WHAT IS IN THE UNIVERSE OF THE  
2 DISCOVERY AT THIS POINT.

3 AND WE HAVE AGREED THAT WHERE DOCUMENTS ARE ON A  
4 ROLLING BASIS OR THERE IS A FUTURE DATE FOR PRODUCTION  
5 CONTEMPLATED, THAT THE PRODUCING PARTY WILL GIVE AN ANTICIPATED  
6 DATE FOR PURPOSES OF TRACKING, AND TO MAKE SURE COUNSEL  
7 UNDERSTAND WHERE THEY ARE IN THIS REGARD.

8 I WILL CHECK ON THE COMPLETION OF THE CERTIFICATIONS,  
9 THE CUSTODIAL FILES AND ALL OF THAT ON JULY 1ST.

10 AND LET ME JUST TURN TO THE PLAINTIFFS. ANYTHING I  
11 HAVE OVERLOOKED IN MY VERY QUICK SUMMARY OF WHAT WAS A FAIRLY  
12 PROLONGED DISCUSSION?

13 **MR. JOHNSON:** YOUR HONOR, I THINK THE ONLY THING, AS  
14 I UNDERSTOOD, THE CERTIFICATIONS WERE GOING TO CERTIFY THE  
15 COMPLETENESS OF BOTH THE IND, THE NDA, COMMUNICATIONS THAT MAY  
16 FALL OUTSIDE OF THE IND AND THE NDA, AND ANY, QUOTE/UNQUOTE,  
17 INTERNAL FDA FILES HELD WITHIN THE POSSESSION OF ANY OF THE  
18 MANUFACTURERS.

19 **THE COURT:** AND TO ADD TO THE ALPHABET SOUP, THE EMA  
20 DOCUMENTATION IS COMING FROM THE DEFENSE, AS WELL.

21 AND IS THE DEFENSE COMFORTABLE WITH THE  
22 CHARACTERIZATION THAT MR. JOHNSON HAS MADE?

23 **MR. GOETZ:** YOUR HONOR, I THINK SO. WE MAY NEED TO  
24 CLARIFY ONCE WE'VE GIVEN OUR CERTIFICATIONS AND THEN WE HAVE  
25 SOMETHING ACTUALLY TO SHOW THE COURT, AND THAT CAN FRAME

1 ISSUES.

2 BUT WE BELIEVE WE CAN CERTIFY AND IN DUE DILIGENCE  
3 PRODUCE THE FDA FILES. THE EMA FILES WILL BE FORTHCOMING. AS  
4 YOU KNOW, CUSTODIAL FILES ARE AT A LATER DATE. AND AS I  
5 MENTIONED IN CHAMBERS, ALTHOUGH AMYLIN HAS PRODUCED A LOT OF  
6 DOCUMENTS ALREADY ON THE CUSTODIAL FILES -- OVER A MILLION AND  
7 A HALF DOCUMENTS -- TRACKING DOWN A FEW REMAINING DOCUMENTS IS  
8 LIKELY GOING TO TAKE US LONGER. AND THAT PARTLY IS BECAUSE OF  
9 A CHANGE IN OWNERSHIP OF THE COMPANY IN FEBRUARY OF THIS YEAR.

10 **THE COURT:** OKAY. AND AS WE DISCUSSED, THE COURT'S  
11 VIEW ON WHAT IS COMPLETE IS A PRODUCTION OF ALL RELEVANT  
12 DOCUMENTS AS DEFINED IN THE MARCH 25TH ORDER, NUMBER 377, TO  
13 THE BEST OF A RESPONDING PARTY'S ABILITY FOLLOWING A DILIGENT  
14 SEARCH AND INQUIRY, MEANING THAT THERE MAY NOT BE ABSOLUTELY  
15 EVERYTHING, BUT WE'RE PRETTY DARN SURE WE CAUGHT WHAT WE CAN TO  
16 A REASONABLE EXPECTATION. AND THAT IS WHAT THE CERTIFICATION  
17 SHOULD BE STATING.

18 AND WITH REGARD TO THINGS OF NECESSITY, THEY ARE  
19 GOING TO BE PRODUCED SUBSEQUENT OR ON A ROLLING BASIS, AND  
20 ESTIMATED DELIVERY DATE SHOULD BE INCLUDED IN EACH INSTANCE.

21 AND WHEN WE SEE THE CERTIFICATIONS AND WE SEE THE  
22 DOCUMENTS, ON JULY 1ST WE MIGHT HAVE A BETTER IDEA IF THERE IS  
23 SOMETHING LEFT TO BE ADJUDICATED OR NOT. AND WE'LL FIND OUT  
24 WHEN WE GET THERE.

25 WE MOVE, THEN, TO THE PARTIES' AGENDA. ITEM NUMBER

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1 ONE WAS THE UPDATE ON DISCOVERY. THE PLAINTIFFS NOTE FOR  
2 INFORMATIONAL ITEM -- I'M NOT GOING TO BANK ON THIS, BUT  
3 ESSENTIALLY 50 PERCENT OF THE DOCUMENTS THAT HAVE BEEN  
4 RESPONDED -- THAT HAVE BEEN REQUESTED AND THE RESPONSES THAT  
5 HAVE BEEN REQUESTED HAVE BEEN MADE. AND MANY OF YOUR RESPONSES  
6 WERE THAT INFORMATION WOULD BE COMING. AND THAT PROMPTED,  
7 ACTUALLY, THE IDEA OF SETTING OUT A TENTATIVE DEADLINE FOR WHEN  
8 THAT PRODUCTION WOULD OCCUR.

9 THE COURT IS GOING TO MONITOR THE COMPLETION OF THAT  
10 JULY 1ST, FOR PURPOSES OF SEEING IF WE HAVE THAT ASPECT OF THE  
11 DISCOVERY, SEPARATE AND APART FROM THE PRODUCTION THAT WAS  
12 SEPARATELY ORDERED FOR THE FDA FILES AND THE CUSTODIAL FILES  
13 AND SO FORTH. WE HAVE TALKED ABOUT THE NEED -- WELL, THAT IS  
14 ON A SEPARATE TOPIC.

15 LET ME ASK. I KNOW I HAVE DONE SHORT SERVICE TO THE  
16 CONCERNS THAT WERE EXPRESSED BUT, ESSENTIALLY, HAVE I SUMMED IT  
17 UP?

18 **MR. JOHNSON:** YES, YOUR HONOR, YOU HAVE.

19 **THE COURT:** AND THE DEFENSE WOULD AGREE?

20 **MR. MARVIN:** YES, YOUR HONOR.

21 **MR. GOETZ:** YES.

22 **THE COURT:** THE PARTIES NEED TO KEEP WORKING ON THAT  
23 AND WE NEED TO GET IT DONE.

24 NUMBER TWO ON THE AGENDA WAS THE PROCEDURE FOR  
25 SEALING DOCUMENTS. AND SPECIFICALLY IT'S RELATED TO UPCOMING

1 OR PENDING BRIEFING. AND IT TURNS OUT THAT THE ORDER DENYING  
2 THE MOTION TO FILE THE DOCUMENTS PRESENTED BY THE PLAINTIFFS  
3 WAS UNWORKABLE IN THE CURRENT CONTEXT OF THE DISPUTE.

4 FRANKLY -- AND MY LAW CLERK REMINDED ME -- WHEN THIS  
5 CAME IN AS A PLAINTIFFS' MOTION TO SEAL, WITH THE DEFENDANTS  
6 HAVING ALREADY MARKED THEM CONFIDENTIAL, WE SORT OF ASSUMED IT  
7 WAS A JOINT MOTION. AND IT TURNS OUT IT'S NOT. THERE IS A  
8 DEFINITE DIFFERENCE OF OPINION. AND SO WHAT WE HAVE  
9 DETERMINED, AND WHAT WILL HAPPEN, IS THAT TOMORROW, MAY 29TH,  
10 WILL BE THE DATE FOR THE DEFENDANTS TO FILE THEIR POSITION ON  
11 THE DOCUMENTS AS TO SEALING. THEY WILL NEED TO MAKE THE  
12 APPROPRIATE LEGAL STANDARD TO RESTRICT PUBLIC VIEW.

13 AND WE ARE GOING TO GIVE THE PLAINTIFFS A NEW DATE --  
14 NOT TOMORROW -- FOR THEIR POSITION -- BUT NEXT WEEK, JUNE 5TH,  
15 AS A FILING DATE OPPOSING THE SEALING REQUEST.

16 NOW THAT THE DEFENSE UNDERSTANDS WHICH DOCUMENTS ARE  
17 IN PLAY, THEY CAN DECIDE WHETHER OR NOT THEY ARE GOING TO  
18 PROCEED TO SEEK TO SEAL ALL OR JUST SOME -- IT'S UP TO THEM --  
19 AND THAT WILL BE REFLECTED IN THEIR FILING. AND THEN, OF  
20 COURSE, THE PLAINTIFFS CAN RESPOND APPROPRIATELY BY JUNE 5TH,  
21 AND THEN THE COURT WILL RULE.

22 THIS PROMPTED THE DISCUSSION, AND THE COURT'S  
23 DIRECTIVE, THAT THE PROTECTIVE ORDER THAT WAS SIGNED BY JUDGE  
24 DEMBIN AND IS IN PLACE NEEDS TO HAVE AN ADVANCE NOTICE  
25 REQUIREMENT PUT IN SO THAT IF SOMEONE INTENDS TO FILE A

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1 DOCUMENT SOMEONE ELSE HAS MARKED AS CONFIDENTIAL, THE PARTY  
2 ASSERTING CONFIDENTIAL STATUS IS ALERTED, DISCUSSION CAN TAKE  
3 PLACE, AND THEN NO ONE IS CAUGHT AT A DISADVANTAGE BEFORE  
4 SOMETHING IS TENDERED TO THE COURT -- AS THE COURTS GETS THEM  
5 INSTANTANEOUSLY ONCE YOU HIT THE SEND BUTTON -- AND THEN THE  
6 OTHER SIDE DOESN'T DISPUTE.

7 SO I WOULD LIKE TO SEE THAT OCCUR QUICKLY AND I'LL  
8 CHECK ON WHETHER WE HAVE THE AMENDMENT BY JULY 1ST, UNLESS I'VE  
9 SEEN IT, AND THEN WE'LL MARK IT AS A DONE ITEM.

10 FROM THE DEFENSE STANDPOINT, IS THAT A FAIR  
11 CHARACTERIZATION ON WHAT WE'VE DONE ON THIS ISSUE TODAY? I AM  
12 STARTING WITH YOU GUYS THIS TIME.

13 **MR. GOETZ:** YES, YOUR HONOR.

14 **MR. KING:** I WOULD ADD, YOUR HONOR, THAT I BELIEVE  
15 THE PROTECTIVE ORDER DOES HAVE SOME ADVANCE NOTICE PROVISION.  
16 WHAT WE WANT TO DO IS GO BACK AND LOOK AT IT TO MAKE SURE IT  
17 ADEQUATELY FITS THE PARTICULAR SITUATION.

18 **THE COURT:** IF YOU FIND IT IS ADEQUATE, FINE, YOU CAN  
19 LET ME SO KNOW THAT. FROM JUST OUR EXPERIENCE HERE, IT  
20 PROBABLY NEEDS SOME BEEFING UP OR SOME CLARIFICATION, SO LET'S  
21 DECIDE ONE WAY OR ANOTHER.

22 THE PLAINTIFFS GOOD WITH THAT?

23 **MR. SHKOLNIK:** YOUR HONOR, YES, IT DOES ACCURATELY  
24 REFLECT THE DISCUSSIONS. THERE IS JUST ONE ISSUE THAT I THINK  
25 WE ARE GOING TO HAVE TO DISCUSS WITH THE COURT, AND MAYBE WE

1 CAN WORK IT OUT BETWEEN US. WHERE THERE IS A SITUATION WHERE  
2 WE'RE PUTTING IN AN OPPOSITION TO A MOTION AND WE HAVE LIMITED  
3 TIME TO OPPOSE IT, THE ADVANCE DISCLOSURE OF DOCUMENTS IS GOING  
4 TO PROBABLY CAUSE AN ISSUE BECAUSE IT'S GOING TO FURTHER REDUCE  
5 OUR TIME TO RESPOND TO A MOTION.

6 **THE COURT:** IT COULD. AND THEN IN THAT INSTANCE YOU  
7 SIMPLY TELL THE OTHER SIDE WE'RE GOING TO NEED MORE TIME TO GET  
8 THIS THING ADJUDICATED, AND THEN CALL THE COURT'S LAW CLERK AND  
9 WE'LL PUSH THE RESPONSE SO THAT WE CAN RESOLVE THE SEALED  
10 ISSUE. WE'LL ADJUST ACCORDINGLY.

11 I THINK WHEN SOMETHING IS FILED WE USUALLY HAVE A  
12 COUPLE OF WEEKS TO RESPOND. SO IT WILL REQUIRE SOME EARLY  
13 ATTENTION TO WHAT POTENTIALLY CONFIDENTIAL DOCUMENTS MAY BE IN  
14 PLAY. AND THE QUICKER YOU CAN ALERT EVERYBODY, THE BETTER.  
15 BUT JUST CALL AND SAY WE CAN'T MAKE THE SCHEDULE BECAUSE THERE  
16 IS SEALED DOCUMENTS AND WE HAVE TO HAVE SOME DISCUSSION OR HAVE  
17 THE COURT RESOLVE.

18 **MR. SHKOLNIK:** THANK YOU, YOUR HONOR.

19 **THE COURT:** AND WE'LL GIVE YOU RELIEF. THAT IS EASY.

20 **MR. HOERMAN:** AND JUST FOR CLARITY, YOU WANT US TO  
21 PROPOSE AN ORDER TO YOUR HONOR?

22 **THE COURT:** FOR --

23 **MR. HOERMAN:** FOR BEEFING UP THE TIME LINE.

24 **THE COURT:** YES. OR SOMEBODY ALERT WENDY THAT YOU  
25 ARE MUTUALLY SATISFIED AND YOU'RE GOING TO ADHERE TO IT, OR



1 JUST SUBMIT A PROPOSED AMENDMENT OR A RESTATED ORDER --  
2 PROTECTIVE ORDER, HOWEVER, SO THAT WE HAVE A CLEAR PATH GOING  
3 FORWARD. SO THAT'S GOOD ON THAT.

4 WE'LL MOVE TO ITEM THREE. COUNSEL REPORT THAT THEY  
5 ARE IN THE DRAFTED DISCUSSION PHASE OF THE DEPOSITION PROTOCOL  
6 FOR THE DEPOSITIONS THAT WILL BE CONTINUING. AND ALL DISPUTES  
7 ARE, HOPEFULLY, GOING TO BE RESOLVED. IF NOT, THE COURT WILL  
8 INTERVENE.

9 THEN THERE IS ALSO A SECONDARY ISSUE OF A PRIVILEGE  
10 LOG PROTOCOL, AND THE COURT HAS INDICATED THAT A STANDARDIZED  
11 TEMPLATE FORMAT PROTOCOL OF WHAT THE PRIVILEGE LOG SHOULD LOOK  
12 LIKE WILL BE VARY ADVANTAGEOUS FOR BOTH SIDES, AND AS BETWEEN  
13 INDIVIDUAL PARTIES IT WOULD BE NICE TO KNOW IF IT'S, OBVIOUSLY,  
14 GOING TO LOOK THE SAME. AND SO YOU FOLKS NEED TO WORK ON  
15 COMING UP WITH THAT PROTOCOL. AND THEN I WILL CHECK ON THE  
16 STATUS OF BOTH THE DEPOSITION PROTOCOL, THE PRIVILEGE LOG  
17 PROTOCOL, ON JULY 1ST.

18 AND IS THAT A FAIR SUMMARY FROM THE PLAINTIFFS' SIDE?

19 **MR. HOERMAN:** YES, YOUR HONOR.

20 **MR. SHKOLNIK:** YES, YOUR HONOR.

21 **THE COURT:** AND HOW ABOUT FROM THE DEFENSE?

22 **MR. MARVIN:** YES, YOUR HONOR.

23 **THE COURT:** NUMBER FOUR, A SOMEWHAT NOVEL ISSUE, WAS  
24 THE TOPIC OF THE CREATION OF A DECEDENT ESTATE ORDER, SOMETHING  
25 SIMILAR TO THE CALIFORNIA FORM UNDER CODE 377, I THINK SOMEONE

1     ALERTED ME TO -- MR. THOMPSON DID.

2             AND THE PARTIES ARE WORKING ON A PROPOSED ORDER FOR  
3     OUR PURPOSES THAT WOULD APPOINT INTERIM ESTATE REPRESENTATIVES  
4     FOR PURPOSES OF THIS LITIGATION, WHICH WOULD REDUCE OR PERHAPS  
5     ELIMINATE, AT THIS TIME, FORMAL ESTATE PROCEEDINGS IN VARIOUS  
6     STATES AND LOCALS, TO ALLOW CLAIMS TO BE BROUGHT INTO THE MDL  
7     AND TO, PERHAPS, ADJUST WHERE DEATHS OCCUR AS THE CASE  
8     PROCEEDS, SO THAT AN APPROPRIATE REPRESENTATIVE WOULD BE IN  
9     PLACE, WOULD HAVE THE COURT'S IMPRIMATUR TO OBTAIN RECORDS AND  
10    INFORMATION AND SO FORTH FOR THE CASE, AND ASSURE HEALTHCARE  
11    REPRESENTATIVES THAT IT'S APPROPRIATE UNDER HIPAA -- WHICH IS  
12    TWO P'S RIGHT? H-I-P-P-A.

13            **MR. SHKOLNIK:**   YES.

14            **THE COURT:**   THAT'S FOR THE COURT REPORTER.   BOY, I  
15    TOOK A CHANCE THERE.   I WAS ALMOST WRONG.   I ALMOST PUT ONE P.  
16    OKAY.

17            BUT THIS, WHILE NOVEL, MAKES ULTIMATE SENSE.   THE  
18    AGREEMENT ASSOCIATED WITH THIS WILL PRESERVE CERTAIN RIGHTS OF  
19    THE DEFENDANTS AND CERTAIN NECESSARY CIRCUMSTANCES IN TERMS OF  
20    RELATED ISSUES.   AND IT MAY REQUIRE NOT ONLY THE SPOUSE BUT  
21    OTHER POTENTIAL HEIRS AT LAW TO SIGN OFF TO MAKE SURE WE ARE  
22    BINDING OR GETTING EVERYBODY IN THE MIX AND NOT HAVING LATER  
23    SEPARATE CLAIMS OR CONFLICTS OVER REPRESENTATION, IS HOW I  
24    UNDERSTAND IT.

25            ULTIMATELY, OF COURSE, FORMAL PROCEEDINGS ARE GOING

1 TO BE NEEDED IN PROBATE COURTS IF THERE IS SETTLEMENT OR  
2 DISTRIBUTION ISSUES, BUT THAT CAN BE TAKEN UP AT A LATER TIME.

3 SO LET ME ASK THE PLAINTIFFS IF I HAVE DONE A FAIR  
4 SUMMARY OR IF I MISSTATED ANYTHING?

5 **MR. THOMPSON:** YES, YOUR HONOR.

6 **THE COURT:** IS THAT A FAIR SUMMARY, DEFENSE?

7 **MR. MARVIN:** YES, YOUR HONOR.

8 **MR. GOETZ:** YOUR HONOR, IT'S ACTUALLY H-I-P-A-A.

9 **THE COURT:** OKAY. BOY, YOU JUST HAD TO PROVE ME  
10 WRONG. JUST KIDDING. OKAY. GOOD TO BE PRECISE.

11 NOW, NUMBER FIVE, COORDINATION OF THYROID CANCER  
12 CASES. THERE ARE 55 CASES WHERE THE INJURY CLAIMED IS THYROID  
13 CANCER. WE KNOW THE MDL WAS ESTABLISHED TO DEAL WITH THE  
14 PANCREATIC CANCER. COUNSEL HAVE EMBARKED ON CREATING A PLAN  
15 FOR COORDINATION OF ALL THE THYROID CANCER CASES THAT ARE  
16 BEFORE THE COURT, AND PERHAPS ONE WILL BE COMING FROM NEW YORK,  
17 BEING DISMISSED THERE AND FILED HERE, SO THAT THEY WOULD  
18 OPERATE AS IF AN MDL CASE FOR PURPOSES OF THE 56 MATTERS. THIS  
19 WOULD BE IN LIEU OF PURSUING JPML APPROVAL. THE PRIOR  
20 APPLICATION WAS WITHDRAWN FOR MDL STATUS OR MDL INCLUSION IN  
21 LIGHT OF A POTENTIAL TO DEAL WITH THEM AS COORDINATED CASES,  
22 AND SOMEWHAT IN A SIMILAR FASHION FORMAT OR WHATEVER, AS WE ARE  
23 DOING NOW.

24 AND I WILL ASK THE DEFENSE, FIRST ON THIS OCCASION,  
25 IS THAT PRETTY GOOD ASSESSMENT OF WHERE WE ARE? MR. KING, YOU

1 ARE WORKING ON THAT, I TAKE IT?

2 **MR. KING:** YES, YOUR HONOR.

3 **THE COURT:** AND FROM THE PLAINTIFFS' STANDPOINT, IS  
4 THAT A FAIR SUMMARY?

5 **MR. HOERMAN:** YES, IT IS, YOUR HONOR.

6 **THE COURT:** AND I HAVE INDICATED YOUR WILLINGNESS TO  
7 DEAL WITH ALL OF THEM ON A LOW-NUMBER COORDINATED BASIS. THE  
8 LOW-NUMBER CASE, WHICH INADVERTENTLY WAS IN THE MDL PILE, HAS  
9 BEEN REMOVED, AND ITS RELATED CASES TAGGING ALONG WITH THAT.  
10 AND I'M WILLING TO TAKE THE COORDINATION OF THAT. AND IF THERE  
11 ARE FUTURE CASES, WE CAN JOIN THEM IN.

12 NOW, THAT COMPLETED THE AGENDA. AND THEN WE  
13 LAUGHINGLY DISCUSSED A NO SANDBAG RULE, WHICH WE WILL NOW PUT  
14 INTO FORCE AND NO NEW ISSUES WILL BE RAISED.

15 BUT MY HOPE, THROUGH THE SUGGESTIONS MADE OR THE  
16 ORDERS MADE, IS TO CONTINUE TO FACILITATE COOPERATION AND  
17 EXPEDIENCY ON SOME OF THESE LOGISTICAL PROCEDURAL ISSUES SO  
18 THAT WE CAN GET TO THE MERITS AS THEY COME UP.

19 WE HAVE OTHER DATES SET ON MOTIONS AND WHATNOT AND  
20 THOSE REMAIN AS SCHEDULED.

21 I JUST GOT, I THINK LAST NIGHT, THE DEFENDANTS'  
22 OPPOSITION ON THE SUMMARY JUDGMENT, WHICH I TRUST WILL ADDRESS  
23 THE 56(D) REQUEST. WE HAVE NOT DISCUSSED THAT AND I DON'T  
24 INTEND TO OTHER THAN TO SAY NOW THAT I HAVE A FULL BRIEFING I  
25 WILL READ THE WHOLE NINE YARDS, TO TRY AND RESOLVE THE ISSUES

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1 AS PRESENTED.

2 IS THERE ANYTHING I'VE MISSED FROM THE PLAINTIFFS'  
3 STANDPOINT, OR ANYTHING ELSE WE OUGHT TO ENGAGE IN?

4 **MR. HOERMAN:** THE ONLY THING, JUDGE, I WOULD LIKE TO  
5 PUT ON THE RECORD IS IN CHAMBERS THERE WAS A DISCUSSION OF THE  
6 EMA FILES, AS YOU'VE MENTIONED. AND THE DEFENDANTS TOLD US  
7 THEY WOULD BE AVAILABLE BY JUNE 16TH; IS THAT CORRECT?

8 **THE COURT:** THE SAME TIME AS THE CUSTODIAL.  
9 IS THAT FAIR, MR. MARVIN?

10 **MR. MARVIN:** FOR MERCK, YES.

11 **THE COURT:** HOW ABOUT AMYLIN, LILLY AND NOVO?

12 **MR. GOETZ:** THAT'S OUR INTENT, YOUR HONOR.

13 **MR. JOHNSON:** YOUR HONOR, MAY I --

14 **MR. HOERMAN:** WAIT. CAN WE GET A COMMITMENT FIRST  
15 FROM ALL THE DEFENDANTS?

16 **MR. JOHNSON:** I ACTUALLY NEED TO CLARIFY THE RECORD.  
17 AFTER WE HAD OUR CONVERSATION IN CHAMBERS, I WAS TOLD BY  
18 COUNSEL FROM NOVO THAT THEY HAD INDEED GIVEN US THEIR EMA  
19 FILING IN A SUBSEQUENT PRODUCTION. I HAVE NOT PERSONALLY SEEN  
20 THAT AND I WAS NOT AWARE THAT THAT HAPPENED. I, OBVIOUSLY,  
21 HAVE NO REASON TO SUSPECT THEY ARE BEING INCORRECT ABOUT THAT.  
22 SO JUST BEFORE WE GOT THAT COMMITMENT, I JUST WANTED TO CLARIFY  
23 THE RECORD, IN FAIRNESS TO NOVO.

24 **THE COURT:** SO NOVO HAS MADE ITS PRODUCTION.

25 BUT LILLY, GIVE US YOUR POSITION WITH REGARD TO THIS

1 JUNE 16TH DATE.

2 MR. KING: IT MAY NOT BE BY JUNE 16TH, BUT IT WILL BE  
3 SOON THEREAFTER.

4 THE COURT: AND AS WE APPROACH THE 16TH, IF IT'S NOT  
5 GOING TO BE, YOU WILL GIVE THEM AN ESTIMATED TIME OF ARRIVAL?

6 MR. KING: WE WILL, YOUR HONOR.

7 THE COURT: AND FROM AMYLIN?

8 MR. GOETZ: YOUR HONOR, WE DO INTEND TO PRODUCE IT BY  
9 JUNE 16TH.

10 THE COURT: AND THEN MERCK'S COMMITMENT WAS THE 16TH,  
11 AS WELL.

12 SO DOES THAT SATISFY THE PLAINTIFFS ON THE STATUS OF  
13 THAT?

14 MR. JOHNSON: IT DOES, YOUR HONOR. THANK YOU.

15 THE COURT: AND ANYTHING ELSE ON THE DEFENSE SIDE?

16 MR. MARVIN: NOTHING MORE, YOUR HONOR.

17 MR. GOETZ: NO, YOUR HONOR.

18 THE COURT: WELL, AS ALWAYS, I APPRECIATE YOUR  
19 CONTINUED WORK AND EFFORTS AND THE COOPERATION. WE WILL HAVE  
20 THE NEXT STATUS CONFERENCE JULY 1ST, 9:00 IN CHAMBERS; 10:00 ON  
21 THE RECORD. AND WE'LL OTHERWISE ANTICIPATE YOUR SUBMISSIONS  
22 AND DEAL WITH YOUR ISSUES AS THEY COME.

23 MR. SHKOLNIK: THANK YOU, YOUR HONOR.

24 MR. HOERMAN: THANK YOU, YOUR HONOR.

25 THE COURT: THANK YOU. WE'LL BE IN RECESS AT THIS

1 TIME.

2 (PROCEEDINGS CONCLUDED AT 2:53 P.M.)

3 CERTIFICATION

4 I HEREBY CERTIFY THAT I AM A DULY APPOINTED,  
5 QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED  
6 STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND CORRECT  
7 TRANSCRIPT OF THE PROCEEDINGS HAD IN THE AFOREMENTIONED CAUSE  
8 ON MAY 28, 2014; THAT SAID TRANSCRIPT IS A TRUE AND CORRECT  
9 TRANSCRIPTION OF MY STENOGRAPHIC NOTES; AND THAT THE FORMAT  
10 USED HEREIN COMPLIES WITH THE RULES AND REQUIREMENTS OF THE  
11 UNITED STATES JUDICIAL CONFERENCE.

12 DATED: MAY 29, 2014, AT SAN DIEGO, CALIFORNIA.

13 S/N

14 JEANNETTE N. HILL, OFFICIAL REPORTER, CSR NO. 11148

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MAY 28, 2014